

A CRUSH IN THE GALLERIES—CLOSE ATTENTION OF MR. BINGHAM'S AUDITORS—THE PRESIDENT MUST EXECUTE THE LAWS—KING ANDREW THE FIRST—A STRONG AND EFFECTIVE ARGUMENT.

At a few minutes before 2 the Court took a recess, and did not resume its session until 2:30, when Mr. Bingham resumed his argument. He quoted the Constitution on the subject of the law-making power of Congress: "It shall be the duty of the President to execute the law." He enlarged upon the absurdity of the position that the President could, by suspending the operation of the law, practically repeat it for any length of time. If such were the case, in the House of Office law, why the President could so act with respect to every other statute. Mr. Bingham was listened to throughout with the closest attention, and the general impression is that so far he has made a most effective argument. The probabilities are that he will not finish before Wednesday.

The ceremonies of the opening having been finished, Manager BINGHAM rose and said:

MR. PRESIDENT AND SENATORS: I protest, gentlemen, that in no mere partisan spirit, in no spirit of resentment or prejudice, do I come to the argument of this great issue. A Representative of the people, upon the obligation of my oath, by order of the people's Representatives, in the name of the people, and for the defense of their Constitution and laws, I this day speak. I pray you, Senators, to hear me for my cause. But yesterday the supremacy of the Constitution and laws was challenged by armed Rebellion. To-day the supremacy of the Constitution and laws is challenged by Executive usurpa-

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And according to the logic of the counsel for the President, the Supreme Court would come to sit in judgment at last on the power given exclusively to each House to judge on the election and qualifications of its own members. Senators, the judicial power of the United States is entitled to all respect, and to all consideration here and elsewhere; but that judicial power, as it is well known to Senators, is defined and limited by the terms of the Constitution, and beyond that limitation, or outside of it, that tribunal cannot go. I read from the Constitution the provision, in answer to the argument of the gentleman, touching the judicial power of the United States.

SECTION 1. The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as Congress may from time to time ordain and establish. The Judges of both the Supreme and inferior courts shall hold their office during good behavior, and shall receive, at stated terms, for their services, a compensation which shall not be diminished during their continuance in office.

SEC. 2. The judicial power shall extend to all cases in law and equity arising under the Constitution; the laws of the United States; and treaties made, or which shall be made, under the authority of the United States; to all cases affecting Ambassadors, other public Ministers and Consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to disputes between two or more States, between a State and citizens of another State, between citizens of different States, between citizens of the same State claiming the benefit of different States, and between a State and foreign States, citizens or subjects. In all cases affecting Ambassadors, other public Ministers, and Consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress may make. The trial shall be by jury, and such trial shall be held in the State where the crime shall have been committed. But when not committed within any State, the trial shall be at such place or places as Congress may direct.

SEC. 3. Treason against the United States shall consist only in levying against them or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act or on confession in open court. The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood or forfeiture, ex-

As I said before, inasmuch as the Senate of the United States has no power to pardon, or to grant any remission, and therefore the exclusive power finally to decide all questions thereon, it results that its decision can neither be reversed nor annulled by any other body of the Government, the Supreme or by any other court of the United States; nor can the final judgment of the Senate on impeachment be reversed or annulled by any other body of the Government, the Supreme, or to revolve by the Executive pardon; for it is written in the Constitution that the pardoning power is vested in the President, and that he shall not be impeached, nor is it a case in law and equity within the meaning of the term as employed in the third clause of the Constitution, and the great principle of law is, in no sense a case within the general judicial power of the United States, and it is not a case in law and equity, and it is not a case to stand in the presence of the United States Senate, and clearly and openly proclaim and avow that the President is not impeached, and that he is not guilty of the crime. Nevertheless the position assumed in this defense for the President is, that he is impeached, and that he is guilty of the crime; that he may suspend the laws so far as they relate to the President, and that he may suspend and construe the Constitution for itself without peril to his official position, and that he may suspend the laws so far as they relate to the President, or if he states either after the crime or after the fact, that he is not impeached, and that he is not guilty of the crime, in pending the law, was to obtain at some future day a judgment in his favor.

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The case of *Marbury vs. Madison*, touching this allegation of an obligation of the heads of Departments to take the oath of office, was decided by the Chief Justice, Marshall, in 1803. It was then held that it is the duty of the Secretary of State to conform to the law, and not to the mere instructions of the President. The President's instructions are above the Constitution, or above the law, and the Secretary of State is bound to obey the President's instructions. Chief Justice Marshall, in his opinion, set up in the defense of this accused and guilty President, that he may with confidence say to the President, "I am bound to obey the United States, I interpret the Constitution, and sit in judicial judgment, as the gentleman from Massachusetts says, 'I am bound to obey the law, and I interpret the law.' The question has also been ruled upon by the Supreme Court of the United States, and from that hour to this the doctrine has been maintained, that the President is bound to obey the law, and not to obey the instructions of the President. It was made to draw the illustrious name of the Chief Justice, who presides at this moment over this deliberative and judicial assembly, to the aid of the President, in support, as I shall show, before I have done this part of the case, of the position assumed by the President, by his counsel, that he is bound to obey the Constitution for himself, that he is the judge of the law, and that he may suspend, or to execute or to suspend them or dispense with them, at his own will and pleasure, and to defy the power of the people to bring him to account, and to demand of him an account of his years ago by the Supreme Court of the United States; and that decision has never been questioned since by any man, and it is the basis of the present decision by the present decision of the courts.

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Mr. Bingham read some extracts from the opinion of the Chief Justice in the Mississippi case bearing upon the point for which he was contending, and continued:

What on earth has that to do with the question? I maintain that the law which is called in question here today is a law which is not only in the language of the Executive, and, in the language of his Honor, Chief Justice, imposes on the Executive a plain, unequivocal duty. I account myself justified, therefore, in saying that the President of the United States, in his assertion that the decision in the Mississippi case has nothing to do with the principle involved in this controversy, and that the President has no right to set aside the plain mandates and requirements of the law. There is no discretion left in him whatever, and because of his refusal to do so, he is guilty of an act which is called in question, gives to the Executive any discretion whatever. The point they make is, that it is unconstitutional, and no law, and that the President is guilty of an act which is called in question. I think that I have just quoted, that the power

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not by the reaction by mere partisans in convention assembled. They ought to have remembered that God is not in the earthquake or the fire, but in the still small voice, and that voice is omnipotent. God knows that for the honor of our common country I would take the step which would place me in the hands of the enemies of the American people in that day of American disgrace. They nominated their candidate for President, and he accepted it, and he was elected President, and he was elected President by the votes of all the States in this Union.

With such a record as that, with such a record of opposition to the interests of the people of the United States, and of the civilized world, executed, how dare gentlemen come before the American people and say that they are going to ask the American people to allow their laws to be defied by any Executive? I deny it. There is not a line in our history which would be so fatal to the assumption. It has never been done, never.

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ended this premature that would have cost any crowned head in Europe this day his life; that he only violated it for the purpose of taking the judgment of the Supreme Court; that he never intended to impeach, the Attorney-General, quoting an opinion of Jefferson, to show that at least the decision of the Supreme Court was not intended; that it could not decide any question. I am not dissatisfied with the speech upon Mr. Jefferson. I know well he was one of the great men of the country, and well he was one of the builders of the fabric of American liberty—of those who worked well the emancipation of American people from the shackles of British rule, and that he deserved well of his country as one of the authors of the Declaration of Independence. I am not dissatisfied with the speech of Mr. Sumner, accepted at this day by the great body of the American people, and find no fault in the authorities upon which he relied. I am not a Connecticut man, without doubtless of the philosophical mind. He was a man of noble patriotic impulses. He rendered great service to his country. I am not a Connecticut man, and I am not an authoritative exponent of the principles of our Constitution, and never was. I may be pardoned further here, for saying, that I do not think that I can give the only object in violating the law was to save the decision of the Supreme Court upon the rights of the President. I do not think that the President, after taking office, afterward lifted to the Presidency of the United States, who, in his place in the Senate Chamber, and in the presence of the members of the House of the United States Bank, said that while he should give respectful attention to the decisions of the Supreme Court, he would not be bound by them. I do not think that a member of Congress, he should, nevertheless, as a Senator, upon his oath, hold himself not bound by it at all. That I do not think that I can give the only object in violating that these authorities quoted by those great men do sustain some sort, it gives any support at all, the position of the President, and I do not think that I can give any support upon all trials of impeachment presented by the House of Representatives the Senate of the United States is the final authority. I do not think that I can give any support of the law, and the fact, no matter what any Court may have said touching any question involved in the impeachment of the President. I do not think that I can give any support in this argument, touching this position of the President, or I intended in every step I take to stand with the Constitution, and I do not think that I can give any support as a representative of the people. I refer to another provision of the Constitution—that which defines and

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